IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

WRIT PETITION NO.2978 OF 2003

Annapurna Shikshan Prasarak Mandal
Mangaon & Ors. ..Petitioners

Vs.

The State of Maharashtra & ors. ..Respondents

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Mr.A.M.Joshi for Petitioners
Mr.M.H.Solkar AGP for Respondent nos.1 and 2.
Mr.P.K.Dhakephalkar for Respondent no.3

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CORAM : B.H.MARLAPALLE,J.

DATE : MARCH 22,2005

P.C.:

1. Heard Mr.Joshi, the learned counsel for the petitioners, Mr.Dhakephalkar, the learned counsel for the respondent no.3 and Mr.Solkar, learned AGP for respondent nos.1 and 2. Respondent no.4 is not a necessary party and therefore, shall be deleted forthwith.

2. This petition arises from the judgment and order rendered by the School Tribunal at Solapur in Appeal No. 90 of 2002 on 21.12.2002.

3. The respondent no.3 was working as a Head Mistress of Savitribai Phule Girls High School at

Madha from 1.7.1985. She came to be elected as member of the Zilla Parishad in March-April 1992 and subsequently became the Chairman of the Zilla Mahila Bal Vikas Samithi Solapur. She therefore, submitted an application for long leave for the period from 19.4.1992 to 30.4.1997. On expiry of her tenure as elected representative, she went back to report for duty on 1.3.1997 but she was not allowed to resume. A lawyer's notice was issued on 30.6.1997 calling upon the management to allow her to resume her duty and to pay salary for the period she was not allowed to join and finally Special Civil Suit No. 585 of 1998 came to be filed in the Court of learned Civil Judge S.D. at Solapur on or about 29.7.1998. The Management opposed the said suit and challenged its maintainability as well. The trial Court by its order dated 24.6.2002 was pleased to hold that it did not have the jurisdiction to entertain and try the Special Civil Suit No. 585 of 1998 and consequently, the suit was disposed of as not maintainable with liberty to the plaintiff to file appropriate proceedings before the proper forum.

4. The respondent teacher therefore, approached the School Tribunal by filing an appeal under Section 9 of the M.E.P.S. Act, 1977 along with the application for delay condonation on or about 30.7.2002. By an order dated 3.9.2002, the learned Presiding Officer

of the School Tribunal was pleased to condone the delay and the appeal came to be registered as appeal no.90 of 2002. The Management appeared and opposed the appeal. The respondent no.2 who was impleaded as one of the respondents in the appeal also filed written statement and pointed out that the respondent-teacher possessed the qualifications of B.A.B.Ed. and she was appointed as Head Mistress in 1985 itself, the said appointment was approved on her passing the examination of B.Ed. in 1988 and obtaining five years teaching experience. It was further pointed out that Savitribai Phule Girls High School became fully aided from June, 1990 and the respondent-teacher's appointment was approved for the academic year 1990-91 as Head Mistress. The respondent no.2 thus supported the case of the respondent no.3 before the School Tribunal.

5. Mr.Joshi, the learned counsel for the petitioner-Management submitted that the appellant teacher was guilty of suppressing material facts and when W.P.No. 99 of 1992 was disposed of by minutes of the order, she played a fraud on the Court inasmuch as she did not disclose that she had already filed her nomination form for contesting Zilla Parishad election. These submissions do not have material force in deciding the challenge to the impugned order and more so because W.P. No. 99 of

1992 was decided after hearing all the parties including the Management and in terms of minutes of the order which were duly signed by the respective parties.

6. The only issue which fell for consideration of the Tribunal was regarding the interpretation of Rule 42 of the M.E.P.S. Rules 1981. The appellant before the School Tribunal had submitted that she had applied for leave for a period of five years vide her application dated 19.4.1992 and under Rule 42 of the M.E.P.S.Rules 1981 she was eligible to get the leave sanctioned. The Tribunal has noted that the said application was received by the Management on 8.5.1992 and if regards be had to the provisions of the Rule 42(6) of the M.E.P.S.Rules, 1981, there was no scope for the Management to reject the leave application. Sub-rule (6) of Rule 42 of the M.E.P.S.Rules, reads as under:

. "In the event of permanent employee further becaming an office bearer as such Chairman, President, Vice President, Secretary, Joint Secretary which demands full time attendance or long time absence from the normal duties, he shall apply for keeping his lien on the post on which he/she held which shall be granted by the Management".

7. The view taken by the School Tribunal by referring to the provisions of Rule 42 of the M.E.P.S.Rules, cannot be termed as perverse or grossly erroneous calling for an interference under Article 227 of the Constitution of India. On the day the teacher had submitted her nomination paper for contesting Zilla Parishad election she was under suspension and the said suspension was without prior approval from the Education Officer (Secondary) Zilla Parishad, Solapur and if the suspension was without approval, it is well settled that entire period for suspension, the Management is required to pay full salary. It is under these circumstances that the order passed by the School Tribunal directing payment of wages from 1.3.1997 is required to be upheld.

8. In the result, this petition fails and the same is rejected summarily. Oral application for stay of this order, is rejected.

[B.H.MARLAPALLE,J.]